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ABSTRACT

This paper presented during the plenary session of the 1989 Telecommunications Policy Research Conference discusses developments in regulatory reform in Nebraska. A review of the current state of the Nebraska telecommunications regulatory environment is followed by a discussion of the deregulation bill (LB 835) and the latest Nebraska Supreme Court decision regarding deregulation. The paper concludes by considering the future of deregulation in Nebraska. (GL)

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Seventeenth Annual
Telecommunications Policy
Research Conference
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Plenary

Developments in State Regulatory Reform

The Experience in Nebraska

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It is a pleasure to be here today. I appreciate this opportunity to speak with such a well informed group. I would like to give you a few more facts and theories rather than policies because I'm not one of the elected Commissioners, rather I am their legal counsel. This morning you have reviewed the whole spectrum of deregulation from the New York model to the Vermont model. The Nebraska model is at the very end of that spectrum. I can never be sure whether the Nebraska model is on the left or the right, depending on whether you are liberal or conservative. All I know is that it is on the very edge of the deregulation models.

I have three objectives in being here today. The first is to discuss the Nebraska environment and to talk about the changes that have and have not taken place in Nebraska. The second objective is to discuss what is in LB 835, the deregulation bill, and in the latest Nebraska Supreme Court decision regarding deregulation. Finally, I'd like to discuss the future of telecommunications in Nebraska.

To give you a little background regarding Nebraska, we have a population of 1.5 million people. We have 800,000 access lines in a largely rural population. Our largest cities are Omaha and Lincoln.

Nebraska has 37 regulated local phone companies. There are 5 unregulated telephone co-ops and 15 interexchange companies. Three interexchange carriers have applications pending in our state. The largest local telephone company is US West Communications, Inc., formerly Northwestern Bell, with 55 percent of the access lines. US West has the honor of having the largest square mile coverage with the sparsest population density. One of the largest independents in the country, Lincoln Telephone and Telegraph, is located in Nebraska.

First you need to have a little background regarding LB 835, our deregulation bill. Nebraska is unique because we have the only Unicameral Legislative System in the country. Having only one house, we have a system that is very accessible to the public but is also very accessible to special interests. The public hearing on a bill is considered the second house of our legislature.

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Complicated telecommunication bills do not make for good public hearings. US West is also known as one of the most aggressive Bell operating companies. To give you an idea of how aggressive they are, several years ago US West had commercials in the market that said, "If you don't make dust, you eat dust." Now to their credit, in Nebraska instead of "Eat our dust" it's "Come ride with us."

In 1986, our Unicameral Legislature passed LB 835, the first bill to deregulate telecommunications and which to this day is the most extensive, sweeping piece of legislation in the nation. And to be honest with you, the Nebraska Public Service Commission opposed the bill and witnessed some extreme lobbying endeavors on the part of some members of the telecommunications industry. The Commission, through our state Attorney General, challenged the bill and went to District Court in Lancaster County in Lincoln, Nebraska. The District Court held that the bill was constitutional. The state appealed this decision to the Nebraska Supreme Court. At that point and time, March of 1987, the Public Service Commission then had to implement LB 835.

On September 1, 1989, the Nebraska Supreme Court held that the deregulation bill was constitutional in a 5-2 decision. The Public Service Commission waited for 6 months for this decision to be released. Although the Nebraska Supreme Court upheld the law, there was a caveat at the end of the decision where the court stated,

> "A Legislature has discretion in determining what measures are reasonably necessary to protect public health, safety, and welfare, and in reviewing a legislative act, a court should not substitute its own judgment for that of the Legislature merely because the court may believe that the Legislature acted unwisely or improvidently. See State v. Yu, 400 So. 2d 762 (Fla. 1981)."

To discuss LB 835, I need to highlight a few of the provisions of the bill. Under LB 835, the Public Service Commission is totally removed from setting the rates and charges for all services and products, with the exception of basic local service. The Commission retains quality of service regulation over all the industry. For all rates and charges, except basic local service, the companies must file a rate list with the Commission. The new rates are effective 10 days after filing. All forms of rate of return regulation have vanished for these services.

The Commission was fortunate that our agency budget was not reduced because of LB 835. In fact, our workload has increased due to reporting procedure required on the status of all the telephone companies annually. If a company sets a rate for basic local service which is over a 10% increase in a 12 month period, then the Public Service Commission can initiate proceedings to review the proposed increase. If the increase is 10% or less, the increase is automatic and the Commission can only review it if a certain percentage of people petition the Commission that

the rates are too high. You can readily see then, that under these rather restrictive provisions, it is a bill that does impact the larger telephone companies in Nebraska.

This bill also deregulates access charges, unless the companies cannot agree. The Public Service Commission will then set the charge. I predict that no company will bring an access charge question to the Public Service Commission unless it is a last resort. Most companies would feel better about negotiating the access charges themselves rather than having the Public Service Commission set the charge.

The bill has been in effect for two years. Since the bill passed, US West has introduced 36 new products and services and has had 22 repricing of services. Some of the new products that have been introduced have been ISDN, ONA, Community Link Gateway Services, Custom Calling features and 976 blocking. Five companies have increased basic local service charges. We have had one company that had a very low basic local service charge and the charge increased from $4.00 up to $12.00. Access charges range in the state from approximately 11 cents per minute to 33 cents per minute.

Now I would like to talk about the future of deregulation in Nebraska. I can tell you that the phone industry in Nebraska is working hard to make this work. The law is passed and the fight is over. Theodore Roosevelt said, "No man is above the law and no man is below it. Nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not as a favor." LB 835 is the law in Nebraska and this Commission is under the mandate to uphold this law. The Commission will use LB 835 to achieve the desired results of the bill. We want to maintain affordable and reasonable rates for all of Nebraska. Nebraska has found that the phone industry in our state also has reacted very favorably to the control in the power they now have. For two years now, most of the companies have shown restraint. Companies generally have always had to put the share-holder's interest first and it will be interesting to see if they will put the public interest or the public welfare also high in their corporate goals. Telephone companies can only help themselves by being open and accessible to the public and to their concerns.

We also see in the future of deregulation that some supporting corrective legislation is necessary. The bill asked the Public Service Commission to report annual recommendations to the Legislature. LB 835 needs to have some fine tuning. The Commission will recommend to the Nebraska Legislature that the customer's right to petition should not sunset in 1991. If this is a protection for basic local increases under 10%, then the right of the consumer to petition should continue in order to maintain that protection. The second change the Commission would recommend is that the standard that the PSC has to look at, whether the rate increase is justified, should be the standard of

fair, just and reasonable. Currently, the standard in the bill is that the Commission may not set a rate below the actual cost of providing that service. Where every other state in the country uses the standard of fair, just and reasonable, which gives you a zone of reasonableness, the PSC actually has to find point A and determine what the actual cost of that service is.

The PSC will still use continued diligence in regard to the quality of service, billing, collection, disconnections of service, and entry and exit of companies in the field.

The focus of my remarks today was to discuss the regulatory climate in Nebraska. I hope I have done that; however, I also wanted to focus on the future of the state and the industry under a modern nonregulatory climate. Many of the companies in Nebraska are using the right approach and I believe it can and will be successful if they stick with that approach. Thank you.